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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,537	11/28/2001	Michael T. Morman	KCC-16,893	2023

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8
EXAMINER

SALVATORE, LYNDIA

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,537

Applicant(s)

Examiner

Lynda M Salvatore

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 31-50 is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 & 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102/103

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-21, 24-27 rejected under 35 U.S.C. 102 (b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fahmy, US 5,465,971.

The patent issued to Fahmy teaches a web comprising coarse filaments and microfibers (Abstract). Fahmy teaches that web has parallel strip regions not forming a mixture but consisting only of coarse filaments or microfibers (Abstract and Figures 5 and 6). Fahmy teaches that such a configuration provides with the non-woven with regions of differing functions (Column 1, 60-64 and Column 2, 5-20). Fahmy further teaches that fiber composition of the regions may be tailored to provide permeability, repellant to moisture or increased drainage capacities (Column 2, 1-11). Fahmy teaches that the diameter of the coarse fibers is more than 15 microns and the diameter of the fine microfibers is less than 10 microns (Column 3, 23-25).

With regard to the interfiber bonding limitations present in claims 2-5 and 7, Fahmy teaches that the compound web material is made in an integrated web formation process where

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the microfibers are applied at a high speed on the layer of coarse filaments such that they penetrate into the cavities of the coarse layer (Column 3, 5-10 and 30-35).

With regard to the bulk density limitations present in claims 18-21, a coherent web comprising discrete regions consisting of coarse fibers and microfibers would inherently meet the limitation of having differing bulk densities.

With regard to the phrase "so as to provide selectively easier necking in the central region", as recited said phrase constitutes a "capable of" limitation and that such a recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138

With regard to the "neckable" limitation set forth in the preamble of claims 1-30 it is reasonable to presume that the non-woven web of Fahmy can be necked since there is nothing evidencing the contrary.

Although, Fahmy does not explicitly teach the claimed areal percentage of interfiber bonding, aspect ratio, and bulk density values it is reasonable to presume that said property limitations are inherent to the invention of Fahmy. Support for said presumption is found in the use of like materials (i.e., coarse and microfibers) and the use of like process (i.e., integrated web formation process to produce a coherent web having discrete regions of differing fiber structure and/or composition), which would result in the presently claimed property limitations. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, said presently claimed property limitations would obviously have been present once the Fahmy invention is provided. *In re Best*, 195 USPQ

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With regard to the percentage of fibers present in each region as recited in claims 25-27, Fahmy does not expressly teach the fiber percentages in each region, however it would have been obvious to one having ordinary skill in the art to optimize the amount of fiber percentages present in each discrete region as a function of said desired permeability, repellency or drainage capacity. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F 2d 272, 205 USPQ 215 (CCPA 1980)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 22,23 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fahmy, US 5,465,971 as applied to claim 1 above, and further in view of Stokes et al., US 5,622,772.

Fahmy fails to teach the use of crimped fibers or the specific fiber materials used, however the patent issued to Stokes et al., teaches conjugate fibers having an ethylene polymer component and a propylene component (Abstract). Stokes et al., further teaches that such conjugate fibers are highly crimpable even at fine deniers (Abstract). The crimped conjugate fibers of Stokes et al., can be used to produce a soft high loft non-woven web (Column 2, 22-29).

Therefore, motivated to impart a desirable degree of softness and loft to the non-woven web of Fahmy it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the crimped conjugate fibers of Stokes et al.

Allowable Subject Matter

5. Claim 31-50 found allowable over the prior art of record. Specifically, the prior art of Fahmy fails to teach "a necked" non-woven web having discrete regions comprising first and second fibers, wherein said first fibers differ from said second fibers. Presently no motivation exists to combine references to form an obvious type rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 4,016,319
GB 2114174 A

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070.


The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



June 30, 2003



TERREL MORRIS
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